Attachment I

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S INVESTIGATION OF THE FINANCIAL IMPACT OF THE TAX CUTS AND JOBS ACT OF 2017 ON REGULATED OHIO UTILITY COMPANIES.	CASE NO. 18-47-AU-COI

FINDING AND ORDER

Entered in the Journal on October 24, 2018

I. SUMMARY

{¶ 1} The Commission finds that Ohio rate-regulated utility companies, unless expressly exempted, should file an application not for an increase in rates, pursuant to R.C. 4909.18, by January 1, 2019, either in an already-pending proceeding or a newly initiated proceeding, to allow the Commission the appropriate opportunity to consider the impacts of the Tax Cuts and Jobs Act of 2017 on each specific company, as described in this Finding and Order.

II. PROCEDURAL HISTORY

{¶ 2} The Tax Cuts and Jobs Act of 2017 (TCJA), signed into law on December 22, 2017, provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate is reduced from 35 percent to 21 percent, effective January 1, 2018.

{¶ 3} The Commission opened the above-captioned, Commission-ordered investigation (COI) in order to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and determine the appropriate course of action to pass benefits on to ratepayers.

{¶ 4} By Entry issued January 10, 2018 (January 10, 2018 Entry), the Commission invited all of the rate-regulated Ohio utilities, as well as other interested stakeholders, to file comments discussing the following: (i) those components of utility rates that the Commission will need to reconcile with the TCJA and (ii) the process and mechanics for how the Commission should do so. The Commission noted several components of utility

rates that commenters could potentially discuss in response. Additionally, the Commission directed utilities to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax resulting from the TCJA, effective January 1, 2018. The utilities were instructed to continue this treatment until otherwise ordered by the Commission.

{¶ 5} On February 15, 2018, comments were submitted on behalf of various utility companies, consumer groups, and other interested stakeholders in response to the January 10, 2018 Entry, including: Ohio Power Company (AEP Ohio), Duke Energy Ohio, Inc. (Duke), The Dayton Power and Light Company (DP&L), and the FirstEnergy operating companies, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (FirstEnergy) (collectively, the Ohio EDUs); Ohio Partners for Affordable Energy (OPAE); Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Consumers' Counsel (OCC); The Northwest Ohio Aggregation Coalition and its fifteen member communities (collectively, NOAC); The Kroger Co. (Kroger); the Ohio Manufacturers' Association Energy Group (OMAEG); the Northeast Ohio Public Energy Council (NOPEC); Ohio Energy Group (OEG); the Ohio Cable Telecommunications Association (OCTA); Securus Technologies, Inc. (Securus); Columbia Gas of Ohio, Inc. (Columbia); Ohio Gas Company (Ohio Gas); The Ohio Telecom Association (OTA); Environmental Defense Fund, Ohio Environmental Council, Environmental Law & Policy Center, Natural Resources Defense Council, and Sierra Club (collectively, Environmental Advocates); Northeast Ohio Natural Gas Corporation, Orwell Natural Gas Company, Brainard Gas Corporation, and Spelman Pipeline Holdings, LLC (collectively, Gas Companies); The East Ohio Gas Company d/b/a Dominion Energy Ohio (Dominion); Vectren Energy Delivery of Ohio, Inc. (Vectren); and Interstate Gas Supply, Inc. (IGS).

{¶ 6} On March 7, 2018, reply comments were submitted on behalf of various utility companies, consumer groups, and other interested stakeholders in response to the February 20, 2018 Entry, including: NOAC; Columbia; OPAE; Environmental Advocates; NOPEC;

Dominion; DP&L; OCC; FirstEnergy; Vectren; Duke; OCTA; OEG; OMAEG; AEP Ohio; Kroger; and IEU-Ohio.

III. DISCUSSION

A. *Summary of the comments*

{¶ 7} The following sections set forth a discussion of comments submitted by various utility companies, consumer groups, and other interested stakeholders in response to the Commission's January 10, 2018 Entry and summarize the parties' respective positions regarding certain components of utility rates that the Commission will need to reconcile with the TCJA and the process and mechanics for how the Commission should do so.

1. Components of utility rates affected by the TCJA

{¶ 8} The majority of comments recognized that there three major areas of discussion when evaluating the components of utility rates that the Commission will need to reconcile with the TCJA: (1) rider rates containing a federal income tax component; (2) accumulated deferred income taxes (ADIT); and (3) reconciling revenue requirements for purposes of calculating base rates.

i. Rider Rates Containing a Federal Income Tax Component

{¶ 9} In regard to rider updates to include language that reflects the 21 percent decrease, several utilities, namely FirstEnergy,[1] AEP Ohio,[2] DP&L,[3] Duke,[4] Vectren,[5]

[1] For example, see Case Nos. 17-2280-EL-RDR and 17-1919-EL-RDR (reducing corporate federal income tax rate impacts in its Distribution Modernization Rider and Delivery Capital Recovery Rider).
[2] For example, see Case Nos. 14-1696-EL-RDR, 17-1156-EL-RDR, and 15-1052-EL-RDR (reducing corporate federal income tax rate impacts in its Distribution Investment Rider, gridSMART Phase 2 Rider and Auction Cost Reconciliation Rider and Alternative Energy Rider).
[3] See Case No. 15-1830-EL-AIR, et al., Opinion and Order (Sept. 26, 2018).
[4] For example, see Case Nos. 17-2088-EL-RDR, 17-1403-EL-RDR, 17-2318-GA-RDR (reducing corporate federal income tax rate impacts in its Distribution Capital Investment Rider, its Distribution Rider -Infrastructure Modernization Rider, and Accelerated Main Replacement Program Rider).
[5] For example, see Case Nos. 18-762-GA-RDR (reducing corporate federal income tax rate impacts in its Distribution Replacement Rider).

Columbia,[6] and Dominion,[7] have already begun voluntarily adjusting or have committed to adjusting in the future their applicable rider tariffs. AEP Ohio and DP&L state that existing terms and conditions of many riders may automatically reflect some of the TCJA impacts, and the Commission should adhere to the statutorily-defined process to make additional changes to rider rates. In fact, AEP Ohio and DP&L aver that many of their current riders were created as part of an ESP, and to modify the riders adopted in an ESP without their consent or outside of the comprehensive ESP process would be a violation of the Commission's statutory authority. While AEP Ohio agrees certain recommendations regarding rider adjustments may be acceptable, including OEG's proposal for retail transmission rate interim adjustments,[8] such adjustments are more appropriate in other dockets specific to those riders. As such, these electric distribution utilities contend that the Commission may only modify rider mechanisms through a separate, prospective ratemaking proceeding that comprehensively reviews offsetting changes in other expense or carrying charge components. OCC, NOPEC, OMAEG, NOAC, and Kroger argue that R.C. 4909.16 rebukes AEP Ohio's assertion that the Commission lacks the authority to modify rider rates set through ESPs, recommending that all riders with tax components be immediately reduced to reflect the new corporate income tax rate. OMAEG and Kroger further state that R.C. 4909.16 broadly gives the Commission power to temporarily alter "any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state." *Lucas County Commissioners v. Pub. Util. Comm.*, 80 Ohio St.3d 344, 347 (1997); *Seneca Hills Serv. Co. v. Pub. Util. Comm.*, 56 Ohio St.2d 410, 413 (1978). OMAEG and Kroger further note that Ohio law provides the Commission with the requisite

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[6] For example, see Case No. 17-2374-GA-RDR (reducing corporate federal income tax rate impacts in its Infrastructure Replacement Program Rider and Demand Side Management Rider).

[7] For example, see Case No. 17-2178-GA-RDR and 17-2177-GA-RDR (reducing corporate federal income tax rate impacts in its Automated Meter Reading cost recovery charge and Infrastructure Replacement Program cost recovery charge).

[8] OEG contends that additional action may be necessary to ensure DP&L's customers receive the transmission-related benefits of the TCJA, as its wholesale transmission revenue requirement is a fixed amount that has remained constant since DP&L joined PJM in 2004. Thus, OEG recommends filing a Section 206 Complaint at FERC to remedy the unjust and unreasonable rate since it does not reflect the TCJA tax savings.

authority to take any action it deems necessary to protect customers from being unfairly and unreasonably charged by utilities. R.C. 4905.22.

{¶ 10} FirstEnergy argues that it is unnecessary to make riders "subject to refund" because it is already updating all of its riders, and utilities may only charge their filed rates. In effect, FirstEnergy states that updating their rates on their own is passing savings on to customers. DP&L, AEP Ohio, and FirstEnergy agree that the existence of an emergency is a condition precedent to the Commission's ability to invoke R.C. 4909.16, which they contend is not the case here. Vectren and Dominion state that rider adjustments are appropriate to reflect the TCJA, and for riders with a pre-tax cost of the capital component, it expects to adjust at the time of the next annual filing to reflect a lower federal income tax rate. Dominion further states that elimination of the bonus tax depreciation for a portion of the investments included in a rider's rate base must also be recognized in any revised calculations. OCC and OEG argue that all riders should be immediately reduced to reflect savings from TCJA, including retail transmission cost recovery riders, distribution investment riders, and distribution modernization riders. Similarly, OMAEG and Kroger argue that the Commission should require all rider updates to account for the TCJA. However, FirstEnergy avers that this argument is unnecessary and unreasonable because many companies have proactively modified their riders to benefit customers and have avoided a violation of the rule against retroactive ratemaking. OEG also adds that the regulatory liability, as it relates to distribution investment riders, should be amortized over one year to ensure that customers receive the benefit of the income tax rate reductions relatively contemporaneous with the actual reduction in income tax rates and income tax expense.

{¶ 11} IEU-Ohio further expounds that there exists some dispute as to whether the adjustment should be effective for tax savings beginning on January 1, 2018, requesting individualized proceedings to test the various assertions of utilities suggesting the answer to this issue is in the negative. Furthermore, IEU-Ohio claims that AEP Ohio's arguments

limiting the Commission's authority to adjust these riders are vague and contrary to Supreme Court precedent. *In re Application of Ohio Power Company*, 144 Ohio St.3d 1, 6, 2015-Ohio-2056, 40 N.E.3d 1060 (where the Court held that the Commission was permitted to modify its prior orders authorizing the ESP, and the riders contained therein, so long as the "new course [was] lawful and reasonable.")

ii. Accumulated Deferred Income Tax

{¶ 12} According to several commenters, the TCJA's reduction in federal income tax rates may create "excess" ADIT and, according to Duke and DP&L, utilities are required to record the excess ADIT as a regulatory liability to be returned to customers over time. Further, Duke and DP&L explain certain excess ADIT generally associated with the accelerated depreciation of property, must be normalized into customers' rates in a highly prescribed manner that mimics the remaining life of the underlying assets, otherwise known as "protected" excess ADIT. "Unprotected" excess ADIT may be treated by the Commission like any other regulatory liability in the rate-setting process, thereby providing the Commission with much more discretion with respect to its treatment. DP&L argues that most of the non-utility commenters seek an annual rate reduction to flow through over time the excess deferred tax, without acknowledging the partially offsetting effect of an increasing rate base resulting from the decreased size of the deferred tax reserve in the rate base. AEP Ohio generally states that the ADIT cannot be addressed quickly. Dominion and Vectren further reiterate this belief stating that the impact of the TCJA on ADIT is considerably more complicated and must be addressed without violating normalization rules, indicating that a violation would result in a company potentially losing the ability to invoke accelerated depreciation. OCC, OPAE, and OEG both make recommendations for utilities to estimate excess ADIT and immediately credit excess ADIT impacts associated with the TCJA back to customers. OEG further suggests that protected excess ADIT should be amortized using the Average Rate Assumption Method (ARAM), as required by the TCJA, and the unprotected excess ADIT should be amortized over 3-5 years. OCC notes

that a true-up would be possible when utilities have more time to complete their review and suggests a procedural schedule to afford any interested stakeholders an opportunity to comment on the proposed monthly bill credits. AEP Ohio, FirstEnergy, and Duke state that this proposal to estimate excess ADIT and establish immediate credits should be rejected because it reflects a misunderstanding of ADIT and conventional ratemaking in Ohio.

{¶ 13} Duke and DP&L further aver that ADIT and the excess ADIT offset rate base and any ADIT included in the last base rate case are offsets to rate base, and, thus, already provide customers with a return at the weighted-average cost of capital approved in the last rate case, and OCC's proposal to accrue carrying costs on excess ADIT would unfairly provide customers double credit from the same regulatory liability.

{¶ 14} Columbia and Duke assert that their companies must re-measure ADIT with the 21 percent rate. Subsequently, Columbia states that this re-measurement would impact base rates, its Infrastructure Development Rider (IRP), and the proposed Capital Expenditure Program (CEP) rider and the excess ADIT will not be assessed until later in the year. Columbia notes that the excess deferred taxes should be carefully reviewed to ensure the proper determination and assignment of excess deferred taxes to the appropriate rate schedules, adding that Columbia will be able to complete such a review by October 15, 2018. Duke states that the precise impacts of the changes to the 2017 financial statements are still being evaluated by the company, and financial impacts of the TCJA in future years, including 2018, are not known with certainty. Dominion also states that it will likely complete its excess ADIT assessment in the third quarter and the results of the assessment can be provided to Staff.

{¶ 15} Ohio Gas and IEU-Ohio argue that federal law does not require the sharing of excess deferred income taxes with customers, and if the Commission orders a sharing, the sharing must be done under either the ARAM or the "Reverse South Georgia Method," the two methods approved by the IRS and TCJA. Pub. L. 115-97, § 13001(d). DP&L agrees that these two prescribed methods appropriately allow both the excess caused by book and tax

reporting differences and the excess deferred tax amount to be flowed back to customers and recommends that these methods also be used for unprotected excess ADIT to reduce administrative burden.

iii. Base Rates

{¶ 16} AEP Ohio, DP&L, and FirstEnergy both state that the Commission may only modify base rates prospectively through a rate case, as required by R.C. Chapter 4909. Additionally, AEP Ohio and DP&L note that it is unreasonable and unlawful to reduce base rates due to a single expense reduction and, instead, recommend utilizing the comprehensive process set forth in R.C. Chapter 4909 to determine if such a reduction is warranted, warning the alternative may constitute single-issue ratemaking. DP&L argues this is especially necessary as current established base rates will likely result in under-earning even after considering the effect of the tax rate change. Kroger, OCC, NOAC, NOPEC, IEU-Ohio, OMAEG and the Environmental Advocates argue that the Commission is not constrained to only modifying rates through a general rate case. OMAEG argues that the Commission has the power to take any actions that it deems necessary to protect customers from being unfairly and unreasonably charged by utilities for tax expenses which no utility will ever be obligated to pay. Kroger and OCC further expound this argument by asserting that Ohio law clearly gives the Commission authority to address the impact of the TCJA under R.C. 4909.16 which explicitly states the Commission may "temporarily alter" existing rates of any public utility "for such a length of time as the commission prescribes," similar to their earlier arguments regarding rates approved as part of an ESP. According to OCC and Kroger, the public would be harmed by allowing utilities to continue to collect rates accounting for a 35 percent tax rate. OCC and OPAE specifically recommend that the Commission direct all Ohio public utilities to estimate the tax impact on their base rates and begin providing a monthly bill credit to customers based on that estimate, including carrying costs, with all new subsequent base rates incorporating the new 21 percent tax rate. Similar to its recommendations regarding ADIT, OCC further indicates that a true-up would

be necessary to account for actual amounts once the utility's new base rates were established and the monthly credits based on the estimate would be discontinued.

{¶ 17} OEG agrees any deferred tax savings accruing since January 1, 2018, should be passed back to customers with interest calculated at the utility's weighted average cost of capital. As a last resort, however, OEG argues that even if the Commission could not alter a utility's base rates due to settlement commitments, procedural requirements, etc., it still retains authority under R.C. 4928.143(F) to review the annual earnings of the utility and to return significantly excessive earnings to customers. OEG suggests that the significantly excessive earnings test (SEET) provides a last line of defense for retail customers that is insulated from retroactive ratemaking arguments. However, in order to ensure the SEET is effective in this regard, OEG recommends that the Commission update the standard deviation methodology to arrive at a more appropriate threshold or utilize the safe harbor, which would result in a SEET threshold of approximately 12 percent for most recent years. FirstEnergy and AEP Ohio contend that OEG's comments regarding the SEET are outside of the scope of this proceeding and are premature.

{¶ 18} Environmental Advocates encourage the Commission to reevaluate the rate impacts of recent orders that incorporate rate increases for credit support which grossed up annual amounts collected to account for income taxes, arguing the Commission should specifically evaluate the TCJA impacts on the non-regulated holding companies of these utilities. See *In re FirstEnergy*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP IV*), Fifth Entry on Rehearing (Oct. 12, 2016); *In re DP&L*, Case No. 16-395-EL-SSO, Opinion and Order (Oct. 20, 2017); *In re AEP Ohio*, Case No. 14-1693-EL-RDR, Second Entry on Rehearing (Nov. 3, 2016). Similarly, Environmental Advocates suggest that the Commission incorporate any impacts from the tax rate reduction on electric utility energy efficiency riders, specifically noting the shared savings component of the rider is grossed up for income taxes. See, e.g., *In re Duke*, Case No. 16-576-EL-POR, Opinion and Order (Sept. 27, 2017).

{¶ 19} In regards to its ESP, FirstEnergy states that it agreed to a base rate freeze to 2024 in order to benefit customers from increasing costs in labor, materials, and healthcare and that modifying the freeze would be bad policy considering FirstEnergy agreed to it. Contrarily, OCC, NOPEC, IEU-Ohio, and OPAE state that R.C. 4905.26 explicitly permits the Commission to adjust previously approved rates when they become unjust and unreasonable, confirmed by Supreme Court precedent and consistent with prior Commission decisions. See, e.g., *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 110 Ohio St.3d 394, 400 (where the Court stated that it has "repeatedly held that utility rates may be changed by the Commission in an R.C. 4905.26 complaint proceeding such as this, without compelling the affected utility to apply for a rate increase under R.C. 4909.18."); *In re the Commission's Investigation into the Policies and Procedures of Ohio Power Co., Columbus S. Power Co., The Cleveland Elec. Illum. Co., Ohio Edison Co., The Toledo Edison Co., & Monongahela Power Co. Regarding the Installation of New Line Extensions*, Case No. 01-2708-EL-COI, Opinion and Order (Nov. 7, 2002). Additionally, NOPEC emphasizes that R.C. 4905.26 may be utilized when previously approved rates become unjust and unreasonable, regardless if those rates were the product of a stipulation. IEU-Ohio agrees that the Commission may adjust rates under R.C. 4905.26, and further states that Ohio courts have held that reasonable grounds may exist to raise issues which might strictly be viewed as collateral attacks on previous orders. However, recognizing this may be a potential point of contention, IEU-Ohio and Dominion recommend addressing the tax savings in base rates from January 1, 2018 by applying any tax savings prior to such adjustments in rates to reduce regulatory assets. OCC, Kroger, and OPAE state that rates charged by Ohio utilities have been unreasonable since January 1, 2018, in violation of R.C. 4905.22, and the Commission should order utilities to estimate the tax benefit and start refunding this benefit back to customers immediately. NOPEC further proposes that the Commission issue an entry under R.C. 4905.26 finding that reasonable grounds exist that Ohio's regulated utilities' rates are unjust and unreasonable. However, DP&L and Duke note that the Commission precedent cited by OCC did not result in an order that changed rates in previously approved utility tariffs

without first providing utilities with due process and an inquiry into their unique circumstances, consistent with R.C. Chapter 4909. FirstEnergy further argues that no reasonable grounds for a complaint under R.C. 4905.26 have been demonstrated. In response to FirstEnergy's concerns regarding the terms of its latest ESP, OCC contends that the stipulation agreed to, and approved, in *FirstEnergy ESP IV* contains an exception to the base rate freeze when an emergency, pursuant to R.C. 4909.16, exists, noting that this statute is applicable in situations where the Commission acts to prevent injury to the interests of the public.

{¶ 20} In terms of a rate impact, AEP Ohio states that the net impact of the gross dollar amount created in the regulatory liability that the Commission has ordered in this proceeding will be determined with the other cost changes presented and comprehensively reviewed at the time of the future rate case, rejecting OCC and OEG's suggestion to flow through estimated ADIT impacts and amortize the TCJA regulatory liability. Duke and AEP Ohio insist that the rate base will be higher in future rate proceedings due to the elimination of bonus depreciation and the reduced value of ADIT. Vectren avers that NOPEC's argument that utilities should file an application not for an increase in rates, under R.C. 4909.18, would ignore any cost increases to be reflected in newly adjusted rates, contrary to Ohio law and sound regulatory policy. In fact, Vectren opines that its prefiling notice in its recently filed base rate case indicates that, even after reflecting the TCJA, its proposed rates are higher than current rates. *In re Vectren*, Case No. 18-298-GA-AIR, Prefiling Notice (Feb. 21, 2018). Dominion suggests that current rates should be restated using a 21 percent tax rate and the test year information from the last rate case proceeding. Columbia's base rates were established in 2008 and believes it will over collect the federal tax expense. Columbia suggests that base rate adjustments could be provided through bill credits and proposes that it be permitted to pass back all base rate over collections resulting from the change in the tax rate, as well as from the need to delay the reduction in base rates, until such time Columbia can accurately determine the impact of ADIT.

{¶ 21} In line with bill credits, OCC demands that utilities estimate the base rate impact and immediately begin providing credit on customer's bills. OPAE agrees with OCC's suggestion of a monthly bill credit and states that credit can be accounted for in the deferred liability account which the Commission has already ordered. Columbia suggests that by immediately providing customers credits based on the estimated impacts, each individual utility would likely need a second round of adjustments when the actual impacts are calculated, and such a process would cause unnecessary confusion among customers and result in several fluctuations in rates.

2. Process and mechanics for reconciliation with the TCJA.

{¶ 22} Without repeating earlier comments, as a general matter, AEP Ohio, FirstEnergy, DP&L, Duke, Vectren, Columbia, Dominion, and Ohio Gas argue that a one-size-fits-all approach to the TCJA is inappropriate and ineffectual; instead, utility-specific solutions should be pursued in utility-specific rate proceedings given that each utility faces different circumstances, including vastly different applicable rate structures, and recommend the Commission be mindful of long-term implications and the financial condition and capital structure of the utility. AEP Ohio further states that utility's plan for pursuing rate changes to reflect the appropriate retail TCJA impacts should be developed with Staff and other stakeholders through mutual cooperation, noting that individualized proceedings will help facilitate settlement discussions regarding the TCJA's complex effects on each utility. In response to these comments, Kroger and OMAEG state that the Commission should decide general principals, policies, and procedures regarding how the TCJA will be implemented, under what authority it will be implemented, and the time frame within which it will be implemented, to ensure consistent results when addressing the TCJA with utilities on an individualized basis. OPAE and the Gas Companies encourage the Commission to follow a similar procedure consistent with that utilized in 1987 when the federal corporate income tax rate was reduced from 46 percent to 34 percent, and in which the Commission sought to weigh the benefit for rate reduction against the goal of

maintaining continuity in terms of quality of service and level of rates. *In re the Commission's Investigation of* the *Financial Impact of the Tax Reform Bill of 1986 on Regulated Ohio Utility Companies*, Case No. 87-831-AU-COI (*1987 Tax COI*). AEP Ohio adds that an individualized approach will allow the Commission to also consider the existing commitments of various utilities, including AEP Ohio's commitment to file a base distribution rate case by June 1, 2020. *In re AEP Ohio*, Case Nos. 16-1852-EL-SSO, et al., Opinion and Order (Apr. 25, 2018). Likewise, Ohio Gas and IEU-Ohio encourage a similar evaluation on a company-by-company basis utilized in the *1987 Tax COI*, given the even more complex regulatory environment today.

{¶ 23} Additionally, several commenters discussed the issue of timing with regard to riders and base rates. Specifically, NOAC asks that the Commission order utilities to immediately cease collecting any charges to customers imbedded in any rates or riders in excess of the federal 21 percent corporate income tax rate. Similarly, OCC urges the Commission to utilize its emergency authority under R.C. 4909.16 or authority under R.C. 4905.26 to reduce utilities' base rates and riders to reflect the TCJA in this proceeding, and NOPEC also seeks immediate bill changes. NOPEC states that a utility's need for increased revenues should not be considered in response to the TCJA, as federal income taxes are passed through to customers and are not intended to affect a utility's rate of return. Vectren, Columbia, and Dominion have expressed concern over the demand for immediacy, noting that the Commission should instead focus on minimizing the number of necessary rate adjustments for each utility to encourage transparency and customer understanding. Specifically, Vectren states that concerns for timeliness, while legitimate, are premised on the concern that delays would allow the utilities to retain the tax benefits, adding that it has committed to record the TCJA benefits from January 1, 2018, and return the benefits to customers in its pending base rate case. As to the deferral already ordered by the Commission in its January 10, 2018 Entry, Duke requests that the Commission clarify that this is only temporary for accounting purposes and is subject to revision following the due process contemplated in R.C. 4905.13 or a future rate proceeding, consistent with Ohio law.

According to Duke, such due process will help ensure the Commission remains mindful of the timing differences that exist between collecting from customers pursuant to established rates and when the companies pay those taxes to the Internal Revenue Service. Dominion argues that a short-sighted remedy could do more harm than good and that the odds of unintended harm will be greatly reduced if the Commission provides stakeholders with reasonable time to work through the TCJA issues and propose targeted solutions.

{¶ 24} Kroger and OMAEG even argue that many natural gas companies, including Ohio Gas, Vectren, and Columbia, have already acknowledged that these issues may be addressed in a pending rate proceeding, even if the test year for said rate proceeding does not include the impacts of the TCJA. See *East Ohio Gas Co. v. Pub. Util. Comm.*, 133 Ohio St. 212, 12 N.E.2d 765 (1938) (where the Supreme Court of Ohio held that where an order of the Commission in valuing property of gas company for rate-making purposes permitted only such deductions for taxes as were based upon amounts appearing in company's books during test period, and rate of taxation was higher in subsequent years, the Commission's order was unlawful and unreasonable). Columbia, FirstEnergy, OMAEG, and Kroger also suggest that in instances when utilities have a pending or upcoming rate case, the impact of the TCJA be addressed as part of those matters. Columbia further avers that by consolidating adjustments into ongoing or upcoming matters, the Commission can limit the administrative burden of filing numerous cases and avoid customer confusion that would result from multiple adjustments. For example, Columbia could file its proposed reduction in base rates resulting from the TCJA in its pending CEP Rider proceeding, Case No. 17-2202-GA-ALT. OCC agrees that adjusting rates in a pending rate case would be an acceptable method to reflect the impacts of the TCJA, noting that no interested party, or the Commission, has suggested that utilities' rates be adjusted without the necessary due process, including the opportunity to participate in this proceeding.

{¶ 25} In addition to the comments discussed above, several stakeholders filed documents in lieu of comments to illustrate their specific positions. Securus indicated that

it has no comment regarding the process and mechanics for how the Commission should reconcile utility rates with the TCJA because its jurisdictional rates were not determined by a traditional rate of return analysis, and thus, the current rates do not include a tax component. OTA requests that the Commission clarify that the order to record a deferred liability for the estimated reduction in federal corporate income tax does not apply to telephone companies, as defined in R.C. 4905.03, because telephone companies' prices are market-based and are not tied to the traditional cost of service rate making, consistent with the Commission's determination in the *1987 Tax COI*. *1987 Tax COI*, Entry (June 9, 1987); R.C. 4927.03(D), 4927.12, 4927.15, 4927.16, 4927.17. Additionally, the OTA argues that the Commission lacks the authority to order telephone companies to record a deferred liability and should, consequently, exempt them from that earlier directive, as well. The OCTA filed a letter in lieu of reply comments stating that the OCTA expects that any impact on pole attachment and conduit occupancy rates associated with the TCJA will be carried through FERC Form No. 1 when adjustment filings are made by the pole and conduit owners pursuant to the Commission's rules and the owners' tariffs. While IGS did file initial comments, it specifically encouraged the Ohio utilities and the Commission to be engaged in the FERC process to ensure that pipeline, storage, and transmission rates are also reviewed to ensure that they are just and reasonable.

{¶ 26} Additionally, though Environmental Advocates agree that the Commission should return any tax cut benefits to customers, as an alternative to the extent the Commission decides not to refund the entire amount of the tax cut to consumers through reduced rates, they implore the Commission to direct that the funds be utilized to maximize the benefit to customers by supporting new projects to modernize the utilities' grids and facilitate the incorporation of clean energy resources, as determined through collaborative processes involving feedback from stakeholders. DP&L agrees that this may be an acceptable alternative, especially since it argues that the deferred regulatory liability merely reduces DP&L's cash flow and limits its ability to strengthen its financial health, consistent with its latest ESP proceeding. *In re DP&L*, Case No. 16-395-EL-SSO, Opinion and Order

(Oct. 20, 2017). Duke maintains similar arguments, stating that, in the *1987 Tax COI*, the Commission authorized portions of tax cut savings to be used for customer service improvements and conservation programs, and such actions should be still be considered reasonable. OCC, Kroger, OMAEG, and OPAE strongly disagree with any of this money being used to fund grid modernization or other investment projects, especially those garnered to improve or maintain a utility's creditworthiness, and encourages the Commission to return the entire amount to customers through reductions in their bills as soon as possible, arguing that this would constitute the most fair and equitable result for all utility customers. OCC additionally notes that these funds should not be used to offset regulatory assets. FirstEnergy similarly opposes Environmental Advocates' alternative suggestion to use the funds for special projects, contending that by instituting new restrictions on FirstEnergy for retained funds associated with the TCJA would be inappropriate and contradict the approved terms of *FirstEnergy ESP IV*.

B. Commission Conclusion

{¶ 27} We have reviewed and considered all of the arguments raised in the comments and reply comments and address them below.[9] Any comment raised that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and rejected. As an initial matter, we once again find it necessary to note that we intend all benefits resulting from the TCJA will be returned to customers. Customers should receive the savings derived from this change, as these savings were never meant to compensate the utilities or increase their respective rates of return, but merely reflect the reality that utilities are required to pay federal income taxes. For this Commission, and as many interested parties conclude in their comments, this COI was initiated to determine when and how any

[9] This Finding and Order does not address the arguments raised in the Ohio EDUs' February 9, 2018 application for rehearing and responsive memoranda contra, including the testimony presented at the July 10, 2018 hearing or the subsequent submitted briefs. The Commission will address those arguments in a future entry on rehearing.

benefits resulting from the TCJA would be passed on to ratepayers, not if they would be passed on to ratepayers.

{¶ 28} The Commission agrees with the overwhelming majority of comments that stress a generalized, "one-size-fits-all" approach would be inappropriate to address all of the issues raised by the TCJA. Although we have made great strides with utilities and the impacts of the TCJA as it affects revenue collected under particular riders, there is still considerable work to do. As many commenters suggested, the Commission has taken an approach to begin incorporating the tax reduction into rates and riders that contain adjustments for federal income tax as those opportunities arise, as many of these riders are updated at least annually, and approving rider tariff language that makes the filed rates subject to reconciliation pursuant to the results of this proceeding. We do not agree with OCC's concerns that utilities may be underestimating the deferred liability amount, as many comments touched on the practical complexity of this endeavor, especially in regard to the effects on ADIT. While the general concept of updating rates to reflect the new corporate tax rate may seem to be a simple adjustment, there are several issues that must be addressed in order to ensure the correct reconciliation is made. This Commission recognizes this complexity and acknowledges the several comments submitted by utilities indicating that they would require additional time to determine certain components of the necessary adjustments, specifically the normalized and non-normalized portions of excess ADIT. As such, even if it would have been possible, an immediate adjustment to rates as to the effects of the TCJA following the legislative change would have been both inaccurate and misleading. However, given that significant time has passed since our last directive in this proceeding and that the Commission has worked with many utilities to begin the process of passing any benefits from the TCJA on to their consumers, including the filing of base rate cases, we find that now is an appropriate time to provide further direction regarding our intent to return all tax savings to customers and the mechanisms for doing so. Overall, the Commission intends to employ a deliberative and thorough approach to evaluating the complicated effects of the TCJA on each Ohio rate-regulated utility, as demonstrated by our

order to create a deferred liability to account for the estimated reduction in federal income tax. This deliberative approach will also assist in minimizing the adjustments necessary to reflect the impact of the TCJA in its entirety, thus limiting administrative burdens and customer confusion as to the affected rates.

{¶ 29} Therefore, in order to address the remaining issues relating to the effects of the TCJA, including rider rates, ADIT, and base rates, the Commission finds that, unless ordered otherwise, all Ohio rate-regulated utility companies should be directed to file applications "not for an increase in rates," pursuant to R.C. 4909.18, in a newly initiated proceeding, to pass along to consumers the tax savings resulting from the TCJA. We find this will be the most appropriate course to resolve any outstanding issues relating to the TCJA and will allow for a more deliberate and thorough analysis for each utility's individual circumstances. Nonetheless, in keeping with our case-by-case approach, the Commission is open to any alternative proposals by utilities, provided such proposals pass all tax savings on to customers, have the full agreement of Staff and provide for input from other interested stakeholders. Utilities should make the necessary filings by January 1, 2019. Failure to make a filing consistent with this Finding and Order may result in the assessment of a civil forfeiture of up to $10,000 per day of non-compliance, pursuant to R.C. 4905.54

{¶ 30} Furthermore, for those utilities directed to file an application under R.C. 4909.18 in accordance with this Finding and Order, the Commission encourages them to follow, as an example, the process and methods contained in AEP Ohio's recently approved plan implementing federal income tax savings in its rates. *In re AEP Ohio*, Case Nos. 18-1007-EL-UNC (*AEP Ohio Tax Case*) and 18-1451-EL-ATA (*AEP Ohio Tariff Case*), Finding and Order (Oct. 3, 2018). These proceedings aptly demonstrate the Commission's intent for all tax savings to be returned to customers and address specific concerns raised by interested stakeholders in this COI, including those concerns of OCTA and the effect of the TCJA on pole attachment rates. Specific to those concerns raised by OCTA, the Commission agrees with OCTA that it would be inappropriate to remove the excess ADIT for purposes of the

pole attachment rate calculation in a one-time lump sum adjustment. Therefore, consistent with our company-specific approach, the Commission directs pole owners filing future pole attachment rate adjustment applications to deduct, in addition to ADIT and depreciation reserves, any unamortized excess ADIT resulting from the TCJA from total gross plant and gross pole investment in their pole attachment rate calculations. The Commission will then determine whether such a deduction is appropriate under the facts and circumstances of that particular case.

{¶ 31} However, as raised in various submitted comments, we recognize that certain companies should be exempt from filing applications not for an increase in rates, pursuant to R.C. 4909.18. We note that several rate-regulated utilities have already implemented or proposed to implement riders to pass back to consumers tax savings resulting from the lower tax rate. Furthermore, the Commission is cognizant of the fact that companies with less than 10,000 customers being served in Ohio will exhibit minimal, if any, impacts from the TCJA and it would be administratively and financially burdensome to request such companies to file an application not for an increase in rates at this time. As such, for the time being, these companies will also be exempted from the Commission's directive. Additionally, mutual or not-for-profit companies will not be expected to comply with the Commission's directive because such companies are not subject to federal income taxes. Finally, as the rates for radio common carriers and telephone companies, including inter-exchange, local exchange, and cellular telephone companies, are basically driven by competitive pricing practices and market conditions, and not derived from traditional ratemaking principles, these companies, too, should be exempt from filing the necessary applications or submitting alternative proposals, consistent with the *1987 Tax COI*. These exempted utilities may also abstain from accounting for the deferred liability, as directed in our January 10, 2018 Entry, except for those who are currently undergoing pending cases, as described above, or have been directed otherwise by this Commission. The Commission will specifically address the treatment of the deferred liability in those pending cases.

{¶ 32} In response to FirstEnergy's specific argument that the base distribution rate freeze approved in *FirstEnergy ESP IV* would not allow for an adjustment to base rates until June 1, 2024, we note that, because we intend on addressing the tax impact upon each rate-regulated public utility on a case-by-case basis, company-specific arguments should be raised in proceedings specific to that utility, rather than a generic proceeding such as this investigation. However, we do agree with FirstEnergy that the scope of these future company-specific proceedings will not be expanded to reevaluate every aspect of past applications from prior proceedings, including *FirstEnergy ESP IV*.

{¶ 33} Finally, the Commission will continue to work collaboratively with the Federal Energy Regulatory Commission, the Organization of PJM States, Inc., and other administrative agencies and organizations to ensure that the effects of the TCJA are correctly reflected in the rates of retail customers when appropriate, as recommended by several commenters, including DP&L, IGS, Ohio Gas and IEU-Ohio. Any action taken by the Commission in respect to these issues, other than collaborative deliberation, would be premature at this time.

IV. ORDER

{¶ 34} It is, therefore,

{¶ 35} ORDERED, That Ohio rate-regulated utilities file an application not for an increase in rates, pursuant to R.C. 4909.18, to reflect the impact of the TCJA on their current rates by January 1, 2019, unless exempted or otherwise directed in this Finding and Order. It is, further,

{¶ 36} ORDERED, That a copy of this Finding and Order be served upon all public utilities (other than motor transportation companies) subject to the Commission's jurisdiction and all interested stakeholders of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

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Secretary